

PD6 Exh 11

Federal Trade Commission (FTC).
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What Is a Compliance Program?

There are many definitions of a compliance program. On a very basic level it is about education, definition, prevention, detection, collaboration, and enforcement. It is a system of individuals, processes, and policies and procedures developed to ensure compliance with all applicable federal and state laws, industry regulations, and private contracts governing the actions of the organization. A compliance program is not merely a piece of paper or a binder on a shelf; it is not a quick fix to the latest hot problem; it is not a collection of hollow words. A compliance program—an *effective* compliance program—must be a living, ongoing process that is part of the fabric of the organization. A compliance program must be a commitment to an ethical way of conducting business and a system for helping individuals to do the right thing.

Who Needs a Compliance Program

- Private Businesses
- Publicly Traded Companies
- Foundations and other Non-Profit Organizations
- Government Agencies
- Schools
- Others

normal program—this time on compliance is in order. In the 1970s and early 1980s, the government was paying exorbitantly high prices for stories (and the late-night talk show host) to get toilet seats. June Gibbs Brown was the head of the department at that time. Under her leadership, the department developed voluntary self-regulatory programs. The Initiative, designed to help eliminate the use of the Website www.dii.org.) addresses the benefits of a compliance program. First and foremost, of course, an effective compliance program addresses the organization's legal responsibility to the public. Other important potential benefits include the ability to:

and the community the
to good corporate conduct
and unethical conduct
information on industry regulations
encourages employees to report

how the prompt, thorough
conduct

appropriate corrective action

exposure to civil damages and
s, and administrative remedies, such

involved may seem daunting, the cost of not
could be higher. A U.S. official has allegedly
pay on the front end, or you can pay on
cheap! "While it may require significant
of existing resources to implement an

effective compliance program," the government believes "the long-term benefits of implementing the program outweigh the costs."¹ An effective compliance program is a sound investment.

Why Compliance Programs are Essential

- To reduce risk of probation and court-imposed programs
- To reduce imposition of government-designed programs
- To reduce risk of exclusion from governmental programs
- To reduce the threat of whistleblower or *qui tam* law suits
- To reduce the imposition of fines and sentences.

Top 10 List of Reasons to Implement a Compliance Program

1. Adopting a compliance program concretely demonstrates to the community at large that an organization has a strong commitment to honesty and responsible corporate citizenship.

One of the company's greatest assets is its reputation and, once damaged, one of the most difficult to repair. An effective compliance program can both preserve and enhance an entity's reputation by preventing fraud and abuse and/or by discovering inappropriate actions early and resolving them in a timely and proper manner.

2. Compliance programs reinforce employees' innate sense of right and wrong.

People have an inherent sense of fair play and want a means to respond to conduct they perceive at a gut-level as wrong. A call to the hotline or a review of the compliance manual not only addresses this need but may identify issues that raise both ethical and legal concerns. By providing employees with ways to express concerns to management and to see a positive response, providers strengthen the relationship of trust with their employees.

3. An effective compliance program helps an organization fulfill its legal duty to government and other private business associates and partners.

By submitting a claim for reimbursement for an item or service, the organization affirmatively represents that the claim is truthful and the services were provided consistent with program requirements. By entering into a

te program requires a commitment of
itures are insignificant in comparison
defending against a fraud investigation.
ication and monitoring of operations and
pliance activities, can create efficiencies

provides ongoing training of employees understanding and compliance with procedures and mechanisms to discipline those individuals who do not follow the correct conduct. It is through these vehicles that the company is acting in conformance with the requirements of the law.

pliance program, a code of conduct sets
as a company providing an item or ser-
and its implementation through training
ment, and prompt response to identified
r's ability to deliver products or services.

gram provides established procedures for dealing with problems that may arise. Through

Early detection and reporting, a company can minimize the loss to the government from false claims, the penalties and sanctions imposed by the SEC and other regulatory bodies, and/or the fines and repercussions of violating contracts. Thereby, companies can reduce their exposure to civil damages and penalties, and criminal and administrative sanctions.

Even those companies that implement compliance programs may engage in conduct that violates applicable statutes and regulations. The Organizational Sentencing Guidelines of the U.S. Sentencing Commission provide for a reduction in criminal fines in cases where the organization has an effective program to prevent and detect violations of the law. Government agents place substantial weight on the existence of an effective compliance program that predates the government's investigation. Furthermore, government investigators tend to give more leniency to individuals and entities who prove to be forthcoming with requested information, communicative and cooperative with the investigation, and proactive with regard to implementing corrective actions—each of which occur more readily with an established compliance program.

When a company seeks to resolve its liability for the submission of false claims or other violations of government requirements, the government must decide whether the company or individual should be excluded from participating in federal programs. Generally, the government will agree to waive its exclusion authority only if the company or individual has in place measures that will ensure the abuses will not recur. If the organization does not have an effective compliance program in place, the government will require a program that is enforceable under the terms of a mandatory corporate integrity agreement. An integrity agreement has detailed policy, training, audit, and reporting requirements that are typically in force for three to five years and involve substantial oversight of the organization by the government.

These factors can have a profound effect on the amount of a fine. They also provide insight into the government approach to compliance programs.

Although a "one size fits all" compliance program does not exist, the government outlines seven basic compliance elements that can be tailored to fit the needs and financial realities of any given organization. The government believes that every effective compliance program begins with a formal commitment to these seven basic elements, based on and expanding upon the seven steps of the federal sentencing guidelines. The seven basic compliance program elements are:

1. Written standards of conduct and policies and procedures
2. Designation of a chief compliance officer and other appropriate bodies
3. Effective education and training
4. Audits and evaluation techniques to monitor compliance
5. Establishment of reporting processes and procedures for complaints
6. Appropriate disciplinary mechanisms
7. Investigation and remediation of systemic problems

The guidelines should be distributed, read, and studied carefully by all employees of an organization, as they make up the backbone of a good compliance program.

Summary of Compliance Program Benefits

- Preventing false or inaccurate claims from being submitted to the government and/or private companies
- Preventing false or inaccurate financial statements from being generated and published
- Fulfilling the fundamental mission of the organization through ethical business conduct and business efficiency
- Improving the quality of services provided

- Demonstrating to employees an organization's strong commitment to conduct
- Providing a more accurate view of behavior related to fraud and abuse
- Improving the operational efficiency of the process
- Improving overall communication between departments
- Identifying and preventing inappropriate behavior
- Improving financial performance
- Creating a centralized source for laws, statutes, regulations, and other related issues
- Encouraging employees to report inappropriate behavior
- Allowing for thorough investigation of actions
- Providing an "early warning" system
- Minimizing an organization's exposure to criminal damages and penalties
- Minimizing an organization's exposure to whistleblower suits or other actions by employees.

many, change can be very frustrating. Just when you think you have it down cold, it changes. We all know that feeling, but that is what compliance is all about. Death, taxes, and changes in compliance guidelines and regulations—all sure things. But that's also what makes compliance one of the most exciting fields today. With that change comes new challenges. You will be challenged constantly to remain abreast of new regulations, to sense the pulse of the industry, to learn innovative ways to motivate and educate staff, to find new strategies to keep executive management informed and involved—in short, challenged always to stay at the top of your game. The work isn't necessarily easy—but it *is* important. Through change you can make a difference.

7. Compliance Program Breaking Points

Given that compliance programs must be tailored to fit an organization and that no two compliance programs are identical, it may be difficult to evaluate how effective your organization's compliance program really is. However, organizations can readily identify when their program is suffering from a “breaking point” that is limiting its effectiveness. The following are common compliance breaking points that could indicate the need for program modification or enhancement:

- Compliance officer has inadequate technical skills (auditing, verbal, and written communication), knowledge (finance, operations, legal requirements), compliance vision, resourcefulness
- Lack of financial resources
- Lack of commitment from employees, vendors, management, CEO, and board of directors
- Compliance officer lacks authority to enforce standards, policies and procedures, disciplinary action
- Compliance officer lacks a direct line of communication with the CEO and board of directors
- Outsourcing of compliance responsibilities to avoid accountability or integration into the organization's operations

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Warning Points

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- Conflicts of interest and/or lack of independence of compliance officer
- Conflicts of interest and/or lack of independence of auditors
- Lack of, or lack of proper dissemination of, policies and procedures
- Inaccurate, highly theoretical, non-tailored, out-of-date policies and procedures
- Poor/incorrect/inadequate training content (in general or for the specific audience)
- Unqualified trainer or train-the-trainer dilution of content
- Education sessions too long, over-packed with information, not made to be interesting (monotone trainer, lack of multimedia use), not required, not frequent enough
- Lack of variation in education (training sessions, memos, postings, one-on-one instruction, web-based training, et cetera)
- Too heavily based on online or web-based training programs
- Lack of understanding of what should be reported and the obligation to report suspected inappropriate actions
- Lack of culture of openness and non-retaliation regardless of anonymity
- Lack of anonymous reporting mechanisms or knowledge of the mechanisms for reporting
- Fear of retaliation or retaliation itself
- Lack of follow-through with information communicated or lack of feedback regarding resolution
- Disciplinary action plan not communicated or made clear to employees/contractors

- Disciplinary action plan not enforced when necessary and as stated
- Disciplinary action plan not progressive or fitting for the “crime”
- Disciplinary action plan not determined on a case-by-case basis
- Auditing and monitoring schedule not sufficient (substance/number/frequency), not followed, or not dynamic/changing to fit new situations, fraud alerts, industry developments
- Auditors not trained well (in auditing techniques or content of audit), not cooperative, or not cooperated with
- Investigations not thorough/comprehensive/timely
- Immediate remediation of problem not taken
- Long-term corrective action plans not put into place
- Lack of continued monitoring into areas of proven noncompliance
- Lack of enforcement of disciplinary guidelines.

Epilogue

As you know, better than most, compliance is a complex and cumbersome laws and regulations are not new. Approaching compliance in a formal, structured manner from management and guidance from the implementing compliance program is our organizations' commitment to providing possible services.

Organizational commitment is key. Commitment not only from management is needed to achieve a truly effective program. Trust is the ultimate benefit of total trust, in turn, is what inspires cooperation. In addition, appropriate and accurate information that staff have the tools to do their job. The result is the confidence of knowing that if a problem is discovered, employees will come forward.

No matter what the culture of your organization, whether a compliance officer or a committee, are charged with building a strong culture. You must work toward that goal every day.

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Epilogue

As you know, better than most, compliance professionals must deal with complex and cumbersome laws and regulations on a daily basis. But industry laws and regulations are not new. Today, more so than in the past, we are approaching compliance in a formal, systematic way. Armed with a mandate from management and guidance from the government, we are creating and implementing compliance programs—programs that embody and fulfill our organizations' commitment to compliance as part of providing the best possible services.

Organizational commitment is key to an effective compliance program. Commitment not only from management but from every staff member is needed to achieve a truly effective compliance program. An environment of trust is the ultimate benefit of total organizational commitment, and that trust, in turn, is what inspires cooperation and participation from all employees. In addition, appropriate and ample educational opportunities ensure that staff have the tools to do their jobs and fulfill their responsibilities. The result is the confidence of knowing that, if there are questions or if errors are discovered, employees will come forward *within* the organization.

No matter what the culture of your organization, you, as a compliance professional, whether a compliance officer or a member of the compliance oversight committee, are charged with building or enhancing that atmosphere of trust. You must work toward that goal every day. Commitment begins with you.

Early on we emphasized strongly that it is better to have no policy than one that is ignored. Embodied in that message is the need for constant atten-